

ADMINISTRATIVE INTERNAL USE ONLY

OGC Has Reviewed

OGC 76-3407

21 June 1976

MEMORANDUM FOR: C/BSD/OP

SUBJECT: Liability Associated With the EAA Auto Maintenance Instruction Classes

REFERENCE: Memo of Agreement, Subj.: Use of Motor Pool Facilities, dtd 13 Apr 76

1. You have requested an opinion from this Office concerning the extent of legal liability, if any, that may result from permitting EAA to use motor pool facilities in connection with an auto maintenance class. You note that paragraph 4 of the Memorandum of Agreement permitting this use specifically states that LSD/OL will not be responsible for any bodily injury incurred by students while working in the garage area.

2. This Office has, on two occasions, issued formal opinions concerning the extent of Agency liability for injuries suffered in EAA activities. The most recent opinion, OGC 67-0545 dated 21 April 1967, noted that the doctrine of assumption of risk would preclude recovery against another for negligence resulting from injury by participation in EAA-sponsored athletic activities. The application of this principle is generally limited to participation sports or events which have inherent dangers associated with them and, therefore, would not be controlling in the present case.

3. It is assumed that the instructors and students will be participating in the class in an off-duty, nonwork-related status. Any injuries occurring during this status would be cognizable under the Federal Tort Claims Act rather than under workmen's compensation benefits, the exclusive remedy for work-related injuries.

4. In the Federal Tort Claims Act Congress specifically waived the sovereign immunity of the United States with respect to claims asserting injury or death caused by the negligence of employees of the United States Government acting in the scope of their employment. The pertinent portion of the Federal Tort Claims Act, codified at 28 U.S.C. 2674, states:

The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment for punitive damages.

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Section 2675 establishes the basis for such tort claims as:

...injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment.... (Emphasis added.)

We believe it unlikely that any suit under the Federal Tort Claims Act would prevail since neither the instructors nor the participants will be acting within the scope of their employment when engaged in the class. Nevertheless, an injured participant might attempt to assert liability by arguing that an Agency employee was negligent during his duty hours (i.e., failed to clean up an oil spill, secure equipment, etc.) and that this negligence caused the injury.

5. We believe that such a claim would also have little likelihood of success. Negligence is essentially the failure to exercise a certain standard of care. The standard which must be exercised generally depends upon the relationship of the parties involved. The General Services Administration views activity associations, such as EAA, which use Government property as licensees. A licensee is one who has authority or permission to do a particular act or series of acts upon the land (Agency premises) of another without possessing any interest or estate in such land. The Director of the Central Intelligence Agency has the authority to grant such a license and to determine the conditions attached to it. No formal language is necessary to create a license as long as the proper intent appears and, in the absence of any consideration passing between the parties, a license is terminated at the end of a stipulated period, the completion of the purpose of the license, or by revocation by the licensor.


6. Rights and obligations of a licensee depend upon his particular status (i.e., gratuitous, invitee, business invitee, etc.) and upon the existence of any agreement. A licensee may exercise only those rights and privileges which are granted by the license. If he goes beyond such rights and privileges, he may become a trespasser. Further, the license does not extend beyond the area which the permit grants or implies.

7. Further, the duty that a licensor owes a licensee also depends upon the licensee status. A licensee by invitation (business invitee) occupies a somewhat preferred position over a gratuitous or implied license. In the former, the licensor of the premises assumes the obligation of making and maintaining the premises in a reasonably safe condition for the use of the license, while the licensee remains thereon by virtue of the invitation, and the

licensor is liable in damages to the person injured thereon who is himself free from contributory negligence. In the latter cases a licensee takes the premises as he finds them and any defects thereon. The licensor is not liable for any injuries resulting from such license or due to the defects in the condition of the premises, subject to the exception that the licensor must not willfully or wantonly cause injury to the licensee.

8. Based upon the facts presented it would appear that the Agency is granting a gratuitous, permissive license to the Employees' Activity Association for use of the premises and not specifically inviting EAA members to engage in the auto maintenance classes that will be presented in that location. Accordingly, we believe the Agency has no affirmative legal duty to ensure the safety of the particular premises in question for such individuals. However, as a matter of policy, we would recommend that the Agency utilize the higher standards applicable to a license invitee and make sure that the premises are reasonably safe and free from defects. We believe adoption of the higher standard of care suggested would reduce the possibility of claims based on negligent acts or omission by employees during duty hours which create a dangerous condition in the auto maintenance class facilities.

9. In our memo referenced in paragraph 2, the writer suggested that, in addition to having EAA acquire accident liability insurance, each participant should be given a briefing by EAA pointing out known and potential dangers of the activity. Further, a statement should be signed by the participant noting that he has received the briefing and comprehends and appreciates the dangers. We still believe this to be a wise policy and would suggest that it might be included as a condition for granting the license. This Office would be happy to assist in the preparation of such a statement.


Office of General Counsel
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